

**ST 02-25**

**Tax Type: Sales Tax**

**Issue: Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE,  
Taxpayer**

**Ted Sherrod**

No. 02-ST-0000  
IBT# 0000-0000  
Assessment No. 00 00000000000000

**Administrative Law  
Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Special Assistant Attorney General John Alshuler on behalf of the Illinois Department of Revenue; JOHN DOE, *pro se*.

**Synopsis:**

This matter is before this administrative tribunal as the result of a timely protest of an LTR 201 Request for Abatement issued by the Illinois Department of Revenue (hereinafter referred to as the "Department") on June 4, 2002 denying the taxpayer's request for abatement of penalty for failure to timely pay tax. The taxpayer protested this determination and requested a hearing, which was held on August 16, 2002. Following the submission of all evidence and a review of the record, it is recommended that this

matter be resolved in favor of the Department. In support of this recommendation, I make the following findings of fact and conclusions of law.

**Findings of Fact:**

1. The Department's *prima facie* case against the taxpayer, inclusive of all jurisdictional elements, was established by the admission into evidence of the Department's LTR-201 Request for Abatement, issued June 4, 2002, denying the taxpayer's request for abatement of late filing and late payment penalties. Dept. Ex. 1.
2. The taxpayer is a resident of Anywhere, Illinois, and is a vice president and owner of ABC Services, Inc., which is located in Chicago, Illinois. Testimony of Taxpayer; Dept. Ex. 1.
3. XYZ Auto Finance is an automobile leasing company engaged in leasing and selling motor vehicles at retail, located in Michigan. Testimony of Taxpayer; Taxpayer's Group Ex. 1.
4. In 1998, ABC Services, Inc. ("ABC Services") entered into an agreement to lease a 1999 GMC truck, 000 0000000000000000 (hereinafter "GMC truck") from XYZ Auto Finance. Testimony of Taxpayer; Taxpayer's Group Ex. 1.
5. On December 19, 2001, the taxpayer acquired title to the GMC truck that previously had been leased to ABC Services from XYZ Auto Finance for the taxpayer's personal use in Illinois and for possible sale to an acquaintance of the taxpayer. Testimony of Taxpayer; Taxpayer's Group Ex. 1.

6. The taxpayer's use tax return (RUT 25) and payment of use tax was due on January 18, 2002 but was received by the Department on February 5, 2002. Taxpayer's Group Ex. 1.
7. On January 29, 2002, the taxpayer filed a form RUT-25 Motor Vehicle Use Tax Return with the Department as required by 35 ILCS105/10 and paid the use tax believed to be due at a currency exchange located in Illinois; at the request of the taxpayer, the currency exchange determined the amount of tax due on the taxpayer's acquisition of title to the GMC truck; however, the currency exchange improperly determined the amount of tax due, resulting in an underpayment of tax by the taxpayer in the amount of seven cents when the RUT-25 was filed. Testimony of Taxpayer; Taxpayer's Ex. 1.
8. The currency exchange used by the taxpayer to complete the filing of the use tax return and payment of the use tax due advised the taxpayer that the filing of the use tax return and payment of use tax should have been undertaken within 30 days of the taxpayer's acquisition of title to the GMC truck from XYZ Auto Finance, and was delinquent. Testimony of Taxpayer.
9. On May 15, 2002, the Department issued an RA-52-11 Notice of Assessment for Form RUT-25 assessing the taxpayer a late filing penalty and a late payment penalty; the taxpayer paid the late filing penalty shown on the Department's assessment, but is seeking abatement of the late payment penalty. Testimony of Taxpayer; Taxpayer's Group Ex. 1.

**Conclusions of Law:**

During the hearing, the taxpayer admitted that he failed to file an Illinois use tax return and pay use tax due within 30 days after the acquisition of a motor vehicle from an out of state retailer, as required by 35 **ILCS** 105/10 and by 86 Ill. Admin. Code § 150.705(i). As a consequence of this non-compliance, the Department assessed a late filing penalty and a late payment penalty pursuant to 35 **ILCS** 735/3-3(a-10) and 35 **ILCS** 735/3-3(b-10). The taxpayer seeks abatement of the late payment penalty pursuant to 35 **ILCS** 735/3-8 which authorizes penalty abatement where non-compliance is due to “reasonable cause”.

The Department determined that the circumstances of late filing of the use tax return and late payment of the use tax due in this case did not establish reasonable cause under the Department’s rules governing the applicability of the reasonable cause penalty exception set forth at 86 Ill. Admin. Code, Ch. I, § 700.400. The Department’s determination is presumed correct. A.R. Barnes & Co. v. Department of Revenue, 173 Ill. App. 3d 826 (1<sup>st</sup> Dist. 1988). Once the presumed correctness of the assessment is established, the burden shifts to the taxpayer to prove that the determination was in error. Copilevitz v. Department of Revenue, 41 Ill. 2<sup>nd</sup> 154 (1968); Central Furniture Mart v. Johnson, 157 Ill. App. 3<sup>rd</sup> 907 (1<sup>st</sup> Dist. 1987); Vitale v. Department of Revenue, 118 Ill. App. 3<sup>rd</sup> 210 (3<sup>rd</sup> Dist. 1983); Masini v. Department of Revenue, 60 Ill. App. 3<sup>rd</sup> 11 (1<sup>st</sup> Dist. 1978); A.R. Barnes & Co., *supra*.

Mr. Doe has admitted that the tax due was not timely filed or paid. The record shows that the use tax return (RUT-25) was not filed within 30 days of his acquisition of the GMC truck, that no tax was paid within this period, and that, when tax was paid, the tax payment made was deficient by seven cents. However, Mr. Doe maintains that the

only penalties imposed by the RA-52-11 Notice of Assessment for Form RUT-25 are for failure to timely file the return and for his underpayment of the correct amount of tax by seven cents. He contends that the notice of assessment makes no reference to his failure to pay use tax due within 30 days of his acquisition of title to the GMC truck.

The record indicates that the amount of tax paid by the taxpayer was determined by the currency exchange that assisted him with filing his delinquent use tax return (RUT-25). The taxpayer contends that he knows nothing about Illinois use tax and therefore had to rely on the currency exchange to determine the correct amount of tax due. He argues that the late payment penalty was assessed for the underpayment of tax due by seven cents. He contends that, because the seven cents underpayment was a result of a computation error by the currency exchange, this underpayment resulted from circumstances beyond his control. He maintains that this situation warrants the application of the reasonable cause exception to the late payment penalty.

Were the seven cents underpayment of tax due the sole basis for the Department's imposition of an underpayment penalty, the taxpayer's claim for abatement would be supported by 86 Ill. Admin. Code, Ch. I, § 700.400(e)(5) which indicates that "(F)actors beyond taxpayer's control" should be taken into account in determining whether reasonable cause excusing a non-compliance penalty is present. However, the RA-52-11 Notice of Assessment for Form RUT-25 issued to the taxpayer plainly indicates that the seven cents underpayment is not the only basis for this penalty. In this form the Department states as follows: "(Y)ou are receiving this assessment for the following reasons. ... (P)ayment of the tax is due 30 days from the date the vehicle was brought into Illinois ... (I)t was due by January 18, 2002 but we received it on February 5,

2002.” This language plainly indicates that the taxpayer’s failure to pay the tax within 30 days of his acquisition of title to the GMC truck is the basis for the late payment penalty at issue in this case. The taxpayer has neither shown, nor attempted to show that there was reasonable cause for this compliance omission.

The taxpayer also contends that his failure to timely file his return cannot be a basis for both a failure to file and a failure to pay penalty. The failure to file penalty is imposed by 35 **ILCS** 735/3-3(a-10) which provides in part as follows:

A penalty equal to 2% of the tax required to be shown due on a return, up to a maximum of \$250, reduced by any tax that is paid on time or by any credit that was properly allowable on the date the return was required to be filed, shall be imposed for failure to file the tax return on or before the due date prescribed for filing determined with regard to any extension of time for filing.  
35 **ILCS** 735/3-3(a-10)

The failure to pay penalty is imposed by 35 **ILCS** 735/3-3(b-10) which provides in part as follows:

A penalty shall be imposed for failure to pay:  
(1) the tax shown due on a return on or before the due date prescribed for payment of that tax ...  
35 **ILCS** 735/3-3(b-10)

Neither 35 **ILCS** 735/3-3(a-10) nor 35 **ILCS** 735/3-3(b-10) limits the Department’s power to impose both a late filing and a late payment penalty as a result of the taxpayer’s failure to file his return and pay the tax due by the due date, January 18, 2002. The imposition of one penalty does not preclude the simultaneous imposition of the other. The penalties are legally independent of each other. This is clear from 35 **ILCS** 735/3-3(a) which provides in part as follows:

If a penalty for late filing or nonfiling is imposed in addition to a penalty for late payment, the total penalty due shall be the sum of the late filing penalty and the applicable late payment penalty.

35 **ILCS** 735/3-3(a)<sup>1</sup>

Moreover, 35 **ILCS** 735/3-3(b-10) provides for the imposition of a failure to pay penalty whenever the taxpayer's payment is delinquent. The application of this provision is not qualified based upon whether this delinquency results from a related late filing of the taxpayer's return. Accordingly, I find no legal basis for the taxpayer's contention.

**WHEREFORE**, for the reasons stated above, it is my recommendation that the Department's denial of abatement of the late filing penalty imposed in this case be upheld, and that the RA-52-11 Notice of Assessment for Form RUT-25 be finalized as issued.

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Ted Sherrod  
Administrative Law Judge

Date: September 10, 2002

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<sup>1</sup> See also 35 **ILCS** 735/3-3(a-10), the failure to file penalty, which contains the language from 35 **ILCS** 735/3-3(a) noted above.